IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 25TH JANUARY 2007 / 5TH MAGHA 1928

WP(C).No. 17265 of 2006(E)

OS.231/1994 of II ADDL.SUB COURT,THRISSUR

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PETITIONER:

SOMASUNDARN,
S/O.KOCHUNNI NAIR,
SUPRABHA, VELIYANNOOR, TRICHUR.

BY ADV. SRI.V.V.ASOKAN
SMT.S.AMINA

RESPONDENTS:

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1. HMT LTD.,
LAMPS DIVISION, H.M.T.POST,
BALANAGAR, HYDERABAD.

2. M/S.PRAKASH STORES,
PRAKASH BUILDERS, HIGH ROAD,
TRICHUR-1, REP. BY PARTNER M.JAYAPRAKASH.

3. M.JAYAPRAKASH,
S/O.KOCHUNNI NAIR,
PARTNER OF M/S.PRAKASH STORES,
TRICHUR-1.

4. SREEKUMAR,
S/O.KOCHUNNI NAIR,
PARTNER OF M/S.PRAKASH STORES,
TRICHUR-1.

BY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C)17265/06

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF THE OBJECTION FILED BY PETITIONER IN E.P.631/04 IN O.S.231/94.

EXT.P2: TRUE COPY OF APPLICATION FOR ADJOURNMENT FILED BY PETITIONER (3RD JUDGMENT DEBTOR) SUPPORTED BY AN AFFIDAVIT FILED BEFORE SUB COURT, THRISSUR.

EXT.P3: TRUE COPY OF ORDER PASSED BY SUB COURT, THRISSUR IN E.P.631/04 IN O.S.231/94.

/TRUE COPY/

PA TO JUDGE

M.SASIDHARAN NAMBIAR,J.

W.P.(C)NO.17265 OF 2006

DATED THIS THE 25th DAY OF JANUARY, 2007

JUDGMENT

Petitioner is third judgment debtor in O.S.231/94, which is executed before Sub Court, Trichur in E.P.631/04. Executing Court as per order dated 22.6.06, directed arrest and detention of judgment debtors 1 to 4, holding that they have sufficient means but neglected to pay the decree debt. Only third judgment debtor challenged that order in this petition filed under Article 227 of Constitution of India.

2. Though notice was served on respondents 1 to 3, respondents did not appear.

3. Learned Counsel appearing for petitioner was heard.

4. Learned Counsel appearing for petitioner submitted that petitioner was impleaded only as legal heir of Kochunni Nair, second defendant in the suit and the properties of his father did not devolve on him and petitioner is therefore not liable to pay the decree debt and he has no means to pay the decree debt and second respondent firm has sufficient assets, which could be realised by first respondent decree holder and therefore the order is to be quashed. Learned Counsel appearing for petitioner also submitted that petitioner could

not adduce evidence as sufficient opportunity was not granted and i such circumstances, the order is to be quashed.

5. Ext.P2 application shows that petitioner had sought an adjournment before the executing Court on 17.3.06. Arguments of learned Counsel appearing for petitioner was that no adjournment was granted and therefore petitioner could not adduce evidence and petitioner may be granted an opportunity to adduce evidence.

In the light of the submissions, the order of arrest passed as against petitioner is set aside. Executing Court is directed to consider afresh whether petitioner is liable to be arrested in execution of the decree in E.P.631/04, after affording an opportunity to him to adduce evidence.

M.SASIDHARAN NAMBIAR,JUDGE

Acd